

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1037 of 1995

with

Civil Application No.610 of 1995

with

Civil Application No.4488 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes.
  2. To be referred to the Reporter or not?-No.
  3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
  5. Whether it is to be circulated to the Civil Judge?-No.

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HEIRS OF MANBHAI SOMJI RANA

Versus

SPECIAL SECRETARY (APPEALS)

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Appearance:

MR NV ANJARIA for Petitioners  
GOVERNMENT PLEADER for Respondent No. 1  
M/S PURNANAND & CO for Respondent No. 3  
MR UR GANDHI for Respondent No. 4  
SERVED for Respondent No. 5  
MR AJ PATEL for Respondent No. 6, 7, 8, 9

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 02/05/97

ORAL JUDGEMENT

Civil Application No.4488 of 1997 has been filed

for vacating the interim order passed in this Special Civil Application against the applicant therein on 15.2.1995. After hearing the parties, I propose to dispose of the main petition itself. Therefore, no order is required to be made in Civil Application No.4488 of 1997. The order made in the main petition shall govern Civil Application No.4488 of 1997 as well and it shall stand disposed of in terms thereof.

This petition has been filed by heirs of deceased Manbhai Somji Rana for the following reliefs :-

"14. xxx xxx xxx

(a) ... .. to issue a writ or order in  
the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the order dtd. 19.8.1993 (Annexure 'D') passed by respondent No.3 and order dtd.30.6.94 (Annexure 'E') passed by respondent No.1 herein.

(aa) .... .... to held that lands  
acquired by respondent No.6 to 9 under the sale deeds dated 1/9/93 and 1/9/93 registered before the Sub-registrar at Bhuj-Kutch vide entry No.2701 & 2702 (dt.1/9/93) and 2720 & 2721 (dt.2/9/93) as invalid in law.

(b) ... .. to issue a writ of or in  
the nature of mandamus directing the respondent No.2 to initiate proceedings against respondent No.5 herein under Section 120 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and be further pleased to direct the respondent No.2 to restore the possession of the land being Survey No.662 situated in the sim of Bhuj subject to final outcome of remand proceedings before the Special Mamlatdar, Bhuj pending pursuant to judgment and order Ann. 'A' by the Gujarat Revenue Tribunal.

(bb) ... .. to issue a writ of or in  
the nature of mandamus directing the respondent No.2 to initiate proceedings against respondent No.6 to 9 herein under

section 120 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 and be further pleased to direct the respondent No.2 to restore the possession of the land being Survey No.662 situated in the sim of Bhuj subject to final outcome of remand proceedings before the Special Mamlatdar, Bhuj pending pursuant to judgment and order Ann. 'A' by the Gujarat Revenue Tribunal."

Facts, in brief, relevant for the purposes of this petition in the context of reliefs claimed may be first noticed. Manbhai Somji Rana, whose legal representatives the petitioners are, was the original owner of the agricultural land, bearing Survey No.662 (old 433), situated in the sim of Bhuj. Respondent No.4, Rajgor Vithalji Mithubhai, applied for occupancy rights in respect of the aforesaid land, claiming himself to be a tenant thereof under the Bombay Tenancy and Agricultural Land (Vidharba Region and Kutch Area) Act, 1958, claiming himself to be in possession of land on 1.4.1961 on payment of purchase price under the Act. The Special Mamlatdar, Bhuj, by his order dated 21st April, 1992, declared respondent No.4 to be an occupant purchaser under Section 46/48 of the Act of 1958, fixing the purchase price of 713.75 to be paid by the respondent. The appeal against that order was rejected by the Deputy Collector on 22nd March, 1994. However, by its order dated 10th August, 1994, the Gujarat Revenue Tribunal set aside both the aforesaid orders and remanded the case back to the Mamlatdar for decision afresh in accordance with law and observation made in the Tribunal's order. The matter rests at that so far as determination of right inter se between petitioner and respondent No.4 is concerned to the land in question.

Respondents Nos. 5 to 8 are all subsequent transferees or successive transferees from respondent No.4. After Special Mamlatdar had declared respondent No.4 to be occupant purchaser under the Act of 1958, respondent No.5, who is purchaser of the rights in the said land from respondent No.4, applied for and obtained permission from Competent Officer for non-agricultural use of the land, vide order dated 19.8.1993, which was confirmed vide order dated 13.6.1994 after proceedings for revision were initiated in respect of the order dated 19.8.1993. Respondents Nos. 6, 7 and 8 are successive purchasers, who were put in possession of different

parcels of land in question under transfers made during the period order of Mamlatdar was in force and before it was set aside. It is not in dispute between the parties that the land in question is not in actual physical possession of the petitioner, but is in possession of the purchasers from persons, who are successors-in-interest from respondent No.4. In this background, while reliefs in paragraphs 14(a) and 14(aa) refer to declaration of permission for N.A. obtained by successors-in-interest of respondent No.4 and also for declaration of succession of title by persons claiming to be successors-in-interest of respondent No.4 to be invalid in law and prayer clauses 14(b) and 14(bb) is for seeking relief by directing the Revenue authorities to recover possession from the occupants and to be handed over to the petitioners.

From the aforesaid facts, it is apparent that so far as the question which relates to the title to land in question is sub judice and pending consideration before the Mamlatdar, the N.A. permission has been obtained by persons, who claim to have derived title from respondent No.4 and possession of the land is also in the hands of those persons, who claim to derive title to remain in possession through respondent No.4. If ultimately respondent No.4 fails before the Mamlatdar and it is held that he did not acquire the status of a tenant-purchaser or he could not acquire the status of tenant-purchaser under the Act of 1958, he could not pass anything better than what he himself possessed to his transferees or successive transferees. In other words, respondents Nos. 6 to 8 do not acquire anything more than the rights which respondent No.4 had in the land. If respondent No.4 had no title to the land in question and his application before the Mamlatdar does not succeed, his successors-in-interest can neither avail of N.A. permission nor can defend their possession on that ground. On the other hand, if title of respondent No.4 to the occupant tenancy by status is upheld by the Mamlatdar, the petitioners do not retain locus standi to challenge the successive transactions and titles derived thereunder under the interest of respondent No.4. Therefore, the reliefs claimed in this petition are merely ancillary to the dispute that is pending before the Mamlatdar and their subsistence must depend upon the result of proceedings before the Mamlatdar regarding application of respondent No.4.

This Court, while issuing rule on 15.2.1995, had stayed the operation and implementation of order dated 19.8.1993, granting N.A. permission to respondent No.5

in respect of the agricultural land in question, as affirmed by the order dated 30th June, 1994 and has further directed respondent No.5 to maintain status quo in respect of the said land, which included prohibition from dealing with the said land in any manner whatsoever. Since the land had already been transferred prior to making of this order in favour of respondents Nos. 6 to 8, they were impleaded as party respondents and interim relief in terms which was directed against respondent No.5 was also directed against respondents Nos.6 to 9 vide order dated 19.4.1995. It has also been brought to the notice of this Court, vide Civil Application No.4488 of 1997 that during the pendency of this petition, the petitioners too have transferred their rights in favour of third parties and relief against exercise of that right by petitioners was sought by way of either vacating the interim relief or by extending the prohibition against petitioners also as in the case of respondents Nos. 5 to 9. It was also urged that this transfer made by the petitioners must be held to be in violation of the Court's order dated 15.2.1995 and 19.4.1995 in as much as on the one hand, the petitioners had claimed relief of restoration of possession, but had made recitation in the sale deeds about handing over of physical possession to respective transferees.

So far as the last contention is concerned, it was apparent that while directing respondents not to exercise their right of alienation of the rights claimed in this litigation by them, no such restraint order was issued against the petitioners. Pending litigation, respective rights of the parties which they claimed automatically do not remain in suspended animation, i.e. to say right of a person to transfer his property choate or inchoate remains intact. Whether such transfer results in vesting titles to third parties would depend upon whether his title is ultimately upheld or not, but pendency of litigation does not affect by itself the right of litigant to deal with his property, to which he has laid claims in the litigation. Therefore, it cannot be said that transfers made by petitioners of their interests in land during the pendency of this litigation is in violation of the orders of Court is not justified. So far as assertion in the sale deed about handing over of actual physical possession of the land in question to transferees in question, Mr.Anjaria, learned counsel for the petitioners, had candidly stated that physical possession of the land in question was not with the petitioners when they had filed this petition nor they had, in fact, delivered actual physical possession to the transferees. The statement in the Sale Deed is, in a

routine way, expression of handing over possession and does not convey more than the transfer of symbolic possession of right, which the petitioners claim to possess.

In the aforesaid circumstance, keeping in view that reliefs claimed in this petition are merely ancillary, and not substantive reliefs by themselves, of the main dispute before the Special Mamlatdar, Bhuj, which concerns determination of respective rights or title to the land in question between petitioners and respondent No.4. Other claimants being successors-in-interest of respective vendors, I deem it just and proper to dispose of this petition with directions that both the parties to litigation, including successors-in-interest, who had come in existence up till now, shall maintain status quo in respect of the actual physical possession of the land and in respect of situation on site. All such persons are further prohibited from making alienations of the land in any manner until the question about title is decided by Special Mamlatdar. Thereafter, it shall be open for parties to seek their remedies against the order made by the Special Mamlatdar in accordance with law and obtain necessary orders in that regard from appropriate forum.

This Special Civil Application stands disposed of in terms stated above. Rule is made absolute. No order as to costs.

C.A. No.610 of 1995 also stands disposed of in terms of this Order.

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(apj)